



UNIVERSITY of VIRGINIA

OFFICE OF THE VICE PRESIDENT FOR STUDENT AFFAIRS

FAX COVER SHEET

Patricia M. Lampkin, Vice President
Office of the Vice President for Student Affairs
SW Wing, Rotunda
P.O. Box 400303
Charlottesville, VA 22904
Tel: 434-924-7984
Fax: 434-924-1002
pml@virginia.edu

To: James Moore, U.S. D.O.E.

Date: February 17, 2005

Fax: 215-656-6499

Pages: 12 (including cover)

Tel:

Re: Significant correction to complaint
response



UNIVERSITY of VIRGINIA
OFFICE OF THE VICE PRESIDENT FOR STUDENT AFFAIRS

February 17, 2005

James L. Moore, III, Senior Institutional Review Specialist
and Nancy P. Klinger, Area Case Director
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 511
Philadelphia, PA 19107

Dear Mr. Moore and Ms. Klinger:

I write with a significant correction to the enclosed correspondence, dated February 15, 2005, which I submitted in response to the complaint filed with the Department of Education by Constance Anne Hylton, Security On Campus, Inc., and Susan Russell against the University of Virginia ("University").

Paragraph five on page seven of the enclosed correspondence reads, in pertinent part:

"It is not infrequent that a complainant has communicated with his or her support group, including family, law enforcement, and legal counsel, prior to filing a sexual assault complaint. University policy does prohibit such continued communications."

It should read:

"It is not infrequent that a complainant has communicated with his or her support group, including family, law enforcement, and legal counsel, prior to filing a sexual assault complaint. *University policy does not prohibit such continued communications.*"

I apologize for this typographical error, and I thank you for filing this correction with my original correspondence.

Sincerely,

Patricia M. Lampkin
Vice President for Student Affairs

Enclosure



UNIVERSITY of VIRGINIA

OFFICE OF THE VICE PRESIDENT FOR STUDENT AFFAIRS

February 15, 2005

James L. Moore, III, Senior Institutional Review Specialist
and Nancy P. Klinger, Area Case Director
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 511
Philadelphia, PA 19107

Dear Mr. Moore and Ms. Klinger:

I write in response to the complaint filed with the Department of Education ("Department") by Constance Anne Hylton, Security On Campus, Inc. ("SOC"), and Susan Russell against the University of Virginia ("University").

I understand from Mr. Loreng's correspondence that the complaint against the University focuses on the provisions of the Clery Act, making the following specific allegations: (1) "University officials advised Ms. Hylton that her right to seek redress through the University's Sexual Assault Board and to be advised on the outcomes and sanctions of these proceedings were contingent upon her making an oral pledge to 'keep the entire process confidential'"; (2) "[A]ll persons involved in these proceedings 'are threatened with disciplinary action under the Honor System' if the disclosure policy is violated"; and (3) "[t]his policy is also a concern because, 'if a student fails to agree to remain silent they in fact wouldn't be told the outcome, and would probably never get a hearing to begin with.'" These allegations are being made either out of confusion or unfamiliarity with University policy and practice. I will try to respond to each in a thorough and constructive way, but would also direct the Department to our proposed draft policy revisions, which were underway prior to our receiving this complaint, and which seek to improve our process and avoid potential for future confusion or misunderstanding.

I further understand from Mr. Loreng's that SOC has additionally alleged: (1) "that the version of this policy published in the University's campus security report differs from the version that appears in other publications and that neither policy reflects accurately the University's actual procedures or their effect;" and (2) "by creating a mandatory confidentiality policy for these proceedings the University has virtually guaranteed they will silence any grievances with the process, or public oversight of any kind despite the clear public interest in campus safety." I will also address these specific allegations at the outset of this response.

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First, unlike the policy that appears to have been in place at Georgetown University, it is neither the policy or practice here to condition a student's receipt of outcome information on the expectation of confidentiality governing the evidentiary proceedings. Students are advised that the education records and other evidence presented at the hearing are confidential, a policy that is fairly common across the nation and which, of course, would be subject to lawful process or where disclosure may be required by applicable laws. Our students are not presented with nondisclosure agreements to sign as a condition of going forward and, contrary to the allegations above, we do not solicit an "oral pledge to 'keep the entire process confidential'" or "threaten...disciplinary action under the Honor System" if confidentiality is breached. Students facing a hearing before the Sexual Assault Board meet preliminarily with the Dean of Students and the Board Chair to discuss the hearing process and procedures and to ask questions or clarify issues of uncertainty. Students are not told that they will not be informed of the disciplinary outcome if they refuse to respect the confidential nature of the hearing. Moreover, as evident from the policy itself, any subsequent breach of confidentiality with respect to the evidentiary proceeding falls within the purview of the Sexual Assault Board, as stated in the procedures, and not within the jurisdiction of the University Honor System.

Ms. Hylton never objected or voiced concerns to University officials regarding the policy or its practice prior to or during the hearing in her case. I am confident that had she done so, any concern or confusion could have been accommodated, unless Ms. Hylton had insisted that she would not respect confidentiality with respect to the evidentiary proceeding itself. In that hypothetical case, which has never presented itself, we would have conferred with legal counsel to be sure that our position was legally correct. Our policy would not have permitted withholding from Ms. Hylton the outcome of the hearing under any scenario.

A review of the hearing transcripts (enclosed as UVA-DOE010004-5) also will show that Ms. Hylton sought the support of her friends, parents, sister, coach, teammates, roommates, and counselor, and openly communicated with these parties, without penalty or pressure from the University not to do so. Following the hearing, in December, 2002, Ms. Hylton communicated via electronic mail with the Board Chair that she was interested in speaking out publicly. See VA-DOE010090-91. The Board Chair responded to Ms. Hylton via electronic mail in December, 2002, and then again in January, 2003, with nothing but supportive offers to help her and facilitate an introduction with "One in Four," a men's group that specializes in sexual assault prevention programs for men. See id. Ms. Hylton accepted that offer, and the Chair forwarded her contact information to a representative of "One in Four." Ms. Hylton also recounted her story to her Gender, Violence & Society class held last spring semester at the University, and she spoke publicly at two Take Back The Night rallies in April, 2004. Finally, in November, 2004, Ms. Hylton published her story with detailed information regarding the University's Sexual Assault Board proceedings in a cover story with a local newspaper.

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Second, with regard to the specific allegations of SOC, it is accurate that an outdated version of the University's Sexual Assault Procedures was published in the University's campus security report in error. The error was immediately corrected when brought to our attention, and we have installed a means to avoid that error in the future. It also should be noted that the current policy was and is widely published throughout the University.

As for SOC's allegation that "by creating a mandatory confidentiality policy for [sexual assault] proceedings the University has virtually guaranteed they will silence any grievances with the process, or public oversight of any kind despite the clear public interest in campus safety," let me state that I fully appreciate the concern and the misassumption underlying it. Such institutional policies, which are common throughout this nation in higher education, are designed constructively to ensure that students will come forward when they would not otherwise, and to comply with an entangling body of federal and state laws protecting educational records and privacy rights. Our policy of confidentiality does not prevent any student from consulting with her or his parents and other persons for support as illustrated in the Hylton case, nor does it prevent a student from reporting an assault with criminal law enforcement, which the University both in policy and practice encourages. The University cares deeply for the safety and security of its students, and regards sexual assault as a crime and violation of the University's Standards of Conduct. We thus strongly encourage students to immediately report any assault to law enforcement.

Our sexual assault policy and procedures are also continually monitored and evaluated because of the seriousness of the allegations involved in these cases. On November 22, 2004, President Casteen issued the statement enclosed as UVA-DOE010092-93 to the University community regarding our current sexual assault policies and practices. We had already been at work for several months to review and improve the University's sexual assault procedures when this statement was issued.

We posted a draft of the revised procedures for three weeks at <http://www.virginia.edu/vpsa/assaultprocedure.html> for the University community to review and provide comment through the website until February 10, 2004.¹ Now that the comment period has concluded, we will begin a thorough review of the public submissions with legal counsel before finalizing the procedures.

Upon your notifying us of complaint in January, the University immediately began a good-faith investigation to respond fully to each of the Department's specific inquiries. The responses below reflect the results of our investigation.

1. *A copy of all incident report(s) generated in Ms. Hylton's case to include the original report and all amendments, revisions, crime log entries, as well as supplemental or investigative reports;*

¹ A hard copy of the revised draft procedures are enclosed for the Department's review as UVA-DOE010094.

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We understand Ms. Hylton first reported this incident to local law enforcement rather than the University, and that the Charlottesville Police Department took Ms. Hylton's original report and investigated the case. We have no objection if the Department wishes to communicate with the city police department or local Commonwealth's Attorney to understand why the case was not prosecuted criminally based on the evidence that was collected.

On December 9, 2001, at approximately 6:30 p.m., Ms. Hylton first notified the University of this incident through the Resident Assistant in her residence hall, Elizabeth Ammann, who then prepared the Incident Report enclosed as UVA-DOE010001. After additional follow up with Dean Stephanie Goodell, see id., Ms. Hylton filed a complaint with the University's Sexual Assault Board on January 2, 2002. See UVA-DOE010002. Dean of Students Penny Rue acknowledged receipt of that complaint the same day. See UVA-DOE010003. Ms. Hylton and the accused student each then completed investigator's reports², which are part of the Sexual Assault Board case file, and are enclosed as UVA-DOE010034-35 in response to paragraph 2 below.

2. *A copy of the transcript (audio and/or hardcopy) of all proceedings regarding Ms. Hylton's case before the Sexual Assault Board to include all filings, pre-hearing adjudication, and other reports, notes, documents, or other records relevant to her case;*

Ms. Hylton's case before the Sexual Assault Board was heard on March 25, 2002, from 5:00 p.m. until 1:00 a.m., and then continued and concluded on April 8, 2002. Transcripts from both hearing dates are enclosed as UVA-DOE010004-5. The Sexual Assault Board case file, which includes all records relevant to the case, is enclosed as UVA-DOE010006-36.

3. *All policies and procedures regarding UVA's Sexual Assault Board process including but not limited to, its mission, the composition of the tribunal (faculty/staff/students/etc), its members (2000-present), their training, the permissible role of parents, counselors, and legal advisors, a statement on its theory of "punishment," and its methods for imposing and enforcing sanctions;*

See the University Procedures for Sexual Assault Cases, enclosed as UVA-DOE010037.³ The Board's membership lists from 2000 to the present are also enclosed as UVA-DOE010038-42.

² Investigators' Reports in sexual assault cases consist of separate statements taken from the complainant and accused student.

³ The procedures in place at the time of the Hylton case are included in the case file and enclosed in response to paragraph 2, above. See UVA-DOE010019.

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Training of the Sexual Assault Board

All new members of the Sexual Assault Board participate in a comprehensive basic training session in the fall semester conducted by the Board's Chair, Senior Associate Dean Shamim Sisson. The basic training includes a review of the following materials: (1) the University's Sexual Assault Adjudication Options; (2) the University Procedures for Sexual Assault Cases; and (3) materials and videotape developed by the State Council for Higher Education in Virginia (SCHEV) in 1993, *Adjudicating Cases of Alleged Sexual Assault: A Judicial Training Manual*.

The University also provides supplemental on-going training by national and regional experts. As examples, in Fall 2002 and 2003, Alan Berkowitz, a national consultant, provided training to the Board on identifying consent in intimate relationships; and in Spring 2002, John Foubert, founder of the men's program "One in Four" devoted to educating men in sexual assault prevention, provided training based on his work and research.

For the last three years, the Sexual Assault Board has also held a mock hearing in order to supplement the basic and expert training with "live" experiences and management of issues.

The experience of hearing and managing cases arguably provides the best training, and several current Board members are experienced panelists. Dean Sisson is also a seasoned veteran with many years of participation in the University's sexual assault training and policy formulation. She has attended numerous workshops and conference programs over the years on the subject of sexual assault in college settings and adjudication, including the three-day NASPA Adjudicating Sexual Assault Workshop.

Role of Parents and Counselors

The procedures do not speak directly to the role of parents and counselors at Sexual Assault Board hearings. The only individuals normally permitted in the hearing room under the procedures are the parties themselves, their advisors, their attorneys, the panel, and the court reporter, and witnesses called by either party.

Theory of Punishment

The Sexual Assault Board does not have a "theory of punishment" *per se*, but it does take direction from the procedures themselves, particularly Sections I.A. and Sections II.D(4)(l) and (p) and from the University's explicit policy that the charge is very serious and may also be criminal. In reviewing the range of permissible sanctions following a finding of guilt, the panel analyzes the nature and severity of the misconduct, the safety and security needs of the complainant, and whether the convicted accused student poses a continued risk to the

Mr. James L. Moore, III and Mrs. Nancy P. Klinger
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University community. As with any hearing body governed by due process, the evidence from both sides must be evaluated in determining guilt and the sanction.

Sanctions

The Board announces its sanction verbally to the hearing parties and their advisors at the conclusion of its deliberations, and then provides it in writing in a decision letter to both parties within fourteen (14) days of the hearing. The Board Chair oversees the completion and enforcement of sanctions. There is no condition attached to either party being informed of the Board's decision. Indeed, to our collective knowledge, the outcome of the disciplinary proceeding has never been withheld from any student, either pre or post-Clery.

4. *A presentation of the legal authority that UVA relied upon in the construction of its nondisclosure policy. This response should state with particularity why these agreements do not violate the relevant sections of the Clery Act and/or FERPA discussed above and why these Federal statutes do not preempt this University policy;*

Your question reflects an improper assumption. The University does not have written or verbal "agreements" as part of its confidentiality policy.

The University's current policy states, in pertinent part:

"The identity of the reporting or accused student and any formal discipline resulting from the hearing may not be publicly disclosed by any participant in the hearing process, either directly or indirectly, except where disclosure may be authorized by law or disclosed in connection with duties on behalf of the University. Witnesses will be reminded during the hearing that their participation and testimony should remain confidential following the hearing. Records of the proceedings will be confidentially respected by the participants and not disclosed except where disclosure may be authorized by law or on behalf of the University in connection with University policy." (Emphasis added.)

The University relied upon the Family Educational Rights and Privacy Act ("FERPA") and the Clery Act in its construction of this policy, and believes it is consistent with both laws as well as federal and state law protecting privacy rights of our students and others.

The University's policy is currently under review, and a revised draft of the proposed revision is posted on the University's website at:

<http://www.virginia.edu/vpsa/assaultprocedure.html>.

5. *An accurate and complete description of the permissible parties with whom an accuser may discuss his/her case with while a matter is before the Sexual Assault Board and what communications are acceptable/unacceptable per UVA policy;*

It is not infrequent that a complainant has communicated with his or her support group, including family, law enforcement, and legal counsel, prior to filing a sexual assault complaint. University policy does prohibit such continued communications. The University's policy of confidentiality relates narrowly to its judicial proceedings for the reasons expressed previously. We have endeavored to make this clearer in our proposed policy revisions.

6. *An accounting of how many cases have gone before the Sexual Assault Board and any other judicial board of the University in calendar years 2001, 2002, 2003, and 2004. Please also advise whether or not the same non-disclosure rules are in effect for all cases adjudicated by the various judicial/disciplinary systems at UVA;*

Sexual Assault Board:

2001: Two Cases
2002: Two Cases
2003: No Cases
2004: Three Cases

University Honor Committee:

2001: 209 Cases
2002: 45 Cases
2003: 77 Cases
2004: 73 cases

University Judiciary Committee:

2001: 60 Cases
2002: 40 Cases
2003: 62 Cases
2004: 55 Cases

First-Year University Judiciary Committee:

2001: 55 Cases
2002: 33 Cases
2003: 22 Cases
2004: 40 Cases

The University Honor and Judiciary Committees, which are fully described in response to paragraphs 7, 8, and 9 below, have their own confidentiality policies, which are outlined in the excerpted documents enclosed as UVA-DOE010043-48.

7. *A description of all other disciplinary, judicial, and/or alternative dispute resolution systems in place at the University. This response should cover any special programs or systems of adjudication in place for athletic programs, fraternities and sororities, other student organizations, residence life, and/or Colleges and schools within the University. Please provide statistics on the number of cases that have come before each board in calendar years 2001, 2002, 2003, and 2004. Please also advise whether or not the same non-disclosure rules are in effect for all cases adjudicated by the various judicial/disciplinary systems at UVA;*

See the enclosed policies. The University operates with a strong tradition of student self-governance. The University Honor and Judiciary Committees, both entirely student run, adjudicate cases that fall within their respective jurisdictions. The Honor Committee adjudicates cases of lying, cheating, and stealing, and has a single sanction of permanent expulsion if an accused student is found guilty. The Judiciary Committee adjudicates alleged violations of the University Standards of Conduct, enclosed as UVA-DOE010049, and may impose a range of sanctions ranging from oral admonition to expulsion. The First Year Judiciary Committee operates by delegation of the Judiciary Committee and has limited jurisdiction of cases of alleged misconduct committed by first-year University students in the first-year residence areas. Students found guilty by the University Judiciary Committee or Sexual Assault Board may appeal to the Judicial Review Board, which is composed of faculty, students, and staff. The case statistics and confidentiality policies for these adjudicative bodies are outlined above in paragraph 6.

The University does not have any special disciplinary programs for athletic programs, fraternities or sororities,⁴ other student organizations, residence life, and/or Colleges or schools within the University.

The Sexual Assault Board, consistent with its procedures, provides for voluntary mediation of cases when both parties consent. See UVA-DOE010037. There was one sexual assault case mediated in 2001; one in 2002; none in 2003; and one in 2004.

8. *Copies of all relevant publications including UVA's 2003 and 2004 Campus Security Reports, Student Handbooks, and any other documentation provided to staff and students that pertain to any of UVA's adjudication programs;*

See documents enclosed as UVA-DOE010050-59 for the University's 2003 and 2004 Campus Security Reports.

See documents enclosed as UVA-DOE010060-62 for handbooks and other publications pertaining to the University's adjudication programs. The following websites are also designed to inform staff and students of these programs:

<http://www.virginia.edu/honor/> (University Honor Committee)

<http://www.student.virginia.edu/~judic/> (University Judiciary Committee)

<http://www.sexualassault.virginia.edu/sa> (Sexual Assault Resources & Processes)

⁴ The Inter-Fraternity Council and Inter-Sorority Council, which are separate legal entities distinct from the University, have their own governing and sanctioning bodies.

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<http://www.virginia.edu/registrar/records/ugradrec/chapter5/chapter5-2.htm>
(General Overview of University Adjudication Systems, as published to all students in the Undergraduate Record)

9. *Copies of all relevant documents developed by any office with significant responsibilities for the adjudication of student conduct. Areas of interest include information on jurisdiction, policies, procedures, missions, sanctioning guidance, and enforcement mechanisms; and, [sic].*

As referenced above, the University Honor and Judiciary Committees are student-run and produce their own documents regarding adjudication. Copies of relevant documents, including the constitutions and by-laws of both committees, are enclosed as UVA-DOE010063-68.

10. *An explanation of the University's policies and procedures for "aftercare" for victims of sexual assaults and other violent crimes to include counseling resources, healthcare, residence life programs, or other initiatives or accommodations typically made available to survivors.*

The University has a comprehensive system of support services to assist victims of sexual assaults and other violent crimes. The Office of Sexual and Domestic Violence Services, formerly known as the Sexual Assault Education Office, is within the University's Women's Center, and is devoted to supporting sexual assault survivors and educating them on their options and resources, both inside and outside of the University. Survivors may seek immediate healthcare at the University Medical Center, where Sexual Assault Nurse Examiners are available to collect evidence using a Physical Evidence Recovery Kit ("PERK"). Survivors may also seek healthcare and counseling at University Student Health, which houses the University's Counseling and Psychological Services ("CAPS"). The Dean of Students Office is also available to assist survivors in providing general support and guidance, seeking academic and housing accommodations, and advising them regarding the University's options for adjudication. Resident staff is annually trained in providing support and resources to students living in residence halls on University grounds. The University also has contracted with a local service agency, the Sexual Assault Resource Agency ("SARA"), where students can seek support services outside of the University or access SARA's hotline 24 hours a day.

University brochures, pamphlets, and other literature, describing the University's support services in greater detail, are enclosed as UVA-DOE010069-88.

11. *All internal guidance, policies, and procedures for the issuance of "timely warnings" as required by the Clery Act. Please advise if a timely warning was issued in the Hylton case. If a warning was issued, please provide a copy. If one was not, please explain why a warning was not issued.*

Mr. James L. Moore, III and Mrs. Nancy P. Klinger
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See document enclosed as UVA-DOE010089, which constitutes the current policy statement of the University Police Department.

A warning was not issued in the Hylton case by the University or the Charlottesville police. As stated in paragraph 1 above, the incident was reported by Ms. Hylton to the Charlottesville Police Department. Moreover, the Sexual Assault Board did not find, on the totality of the facts presented by both sides, that the accused student posed a continuing risk of danger to Ms. Hylton or to the University community. We encourage the Department to review the totality of the evidence to understand the basis for the outcome in this case.

12. Copies of all documents necessary to support any and all representations made and positions taken in your response.

We believe we have provided you all documents that you have requested.

Finally, you asked for information concerning an allegation about the University Police Department's reporting under the Clery Act. The University Police Department received an automated message from SOC through its website on March 28, 2004, claiming certain inadequacies in the University's crime log. The University Police promptly investigated this claim and concluded that in building its new webpage, their computer technician had loaded an earlier file of statistical information rather than the current file. This was immediately corrected, and on March 29, 2004, Captain Michael Coleman responded to SOC that these corrections had been made. SOC also contended that the crime log should reflect dates of occurrence in addition to dates of report. Without necessarily agreeing with SOC's conclusion, the University now lists both dates in its log.

Sincerely,



Patricia M. Lampkin
Vice President for Student Affairs

Enclosures (UVA-DOE010001-94)